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Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

JEFFREY L. LORANGER,

Petitioner,

v.

STATE OF WISCONSIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

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45 pgs

QUESTIONS PRESENTED FOR REVIEW

1. THE WISCONSIN COURT OF APPEALS AFFIRMED A JUDGMENT ARISING FROM A CASE WHOSE SOLE EVIDENCE AROSE FROM A SEARCH WARRANT ISSUED ON THE BASIS OF A THERMAL IMAGERY SURVEY. COUNSEL HAD ARGUED THAT THE THERMAL IMAGERY WAS A SEARCH UNDER THE FOURTH AMENDMENT. THE STATE COURT HELD THAT A GOOD-FAITH EXCEPTION PERMITTED USE OF THE EVIDENCE SO OBTAINED.

2. THE WISCONSIN COURT OF APPEALS OVERRULED A *FRANKS* MOTION AS TO AN AFFIDAVIT FOR A SEARCH WARRANT WHERE IT WAS APPARENT THAT THE OFFICER'S AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT CONTAINED NUMEROUS STATEMENTS WHOSE ACCURACY HE COULD NOT VOUCH FOR, AND WHERE HE FAILED TO VERIFY BASIC INFORMATION.

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OPINIONS BELOW

The judgment sought to be reviewed is the decision of the Court of Appeals of Wisconsin, entered 20 December 2001. Loranger's (Petitioner's) Petition for Review to the Supreme Court of Wisconsin was denied by Order dated 19 March 2002.

BASIS FOR JURISDICTION

Jurisdiction in this Court is based upon 28 U.S.C. §1257(a), in that the petition seeks to review the application of Wisconsin law governing searches and seizures, which Loranger contends is repugnant to the Constitution of the United States. This petition was timely filed.

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

The Fourth Article of Amendment to the Constitution of the United States provides that:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The Iowa County, Wisconsin, Circuit Court issued a search warrant on the 6th of May 1999, authorizing a search of the home of Jeffrey L. Loranger, the Defendant. The Deputy supported his request for this warrant by stating: (a) that an agent had interviewed a confidential informant who stated that a year and one-half earlier, he had seen a "marijuana grow operation" in Loranger's home, which consisted in part of heavy shop lights with powerful bulbs, and (b) that based on this allegation, a "thermal imagery site assessment" of the property had been carried out the day before, and that, based upon an attached document stating some facts about average electric usage, this thermal imaging showed an unusual amount of heat emanating from a corner of the residence. The agent had inferred that the heat was generated by indoor grow lights, and that the electric usage at Loranger's house was greater than "the average monthly kilowatt usage."

The warrant was executed, contraband was found, and Loranger was charged with counts of manufacturing marijuana, maintaining a building for that purpose, and possession of firearms by a felon. By written Motion dated 20 July 1999, counsel for Loranger moved to suppress all evidence obtained by the State resulting from the thermal search and the subsequent physical search of his property, asserting that the search was illegal under the Fourth Amendment to the Constitution of the United States, and he also moved, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978), to suppress the evidence on the ground that the State had omitted material facts from the affidavit supporting the warrant, which, if included, would have vitiated any claim of probable cause to issue the warrant.

The trial court denied both of Loranger's motions, holding principally that under Wisconsin law the use of thermal imagery was not a search implicating the Fourth Amendment, and that the Deputy had not shown intentional or reckless disregard of the truth in the affidavit. Following evidentiary hearings held 23 November 1999 and 1 February 2000, the trial court concluded that the affidavit was sufficient to support a finding of probable cause. (Order of

10 April 2000)

Following Loranger's plea of No Contest, adjudication of guilty, and sentencing, his attorneys filed a timely Appeal to the Wisconsin Court of Appeals. In their principal brief on appeal, they raised the following issues: (1) "Does the warrantless examination of a home by means of a thermal imaging device constitute a search?" (2) "Was the affidavit supporting the subsequent warrant for the search of Mr. Loranger's house either reckless or intentionally false": and (3) "Did the affidavit supporting the subsequent warrant for the search of Mr. Loranger's house lack probable cause?" (Statement of Issues, Loranger's Principal Brief on appeal, at v)

In a decision dated 20 December 2001, the Wisconsin Court of Appeals affirmed the judgment of the trial court. It agreed that the thermal imaging was a search, and under *Kyllo v. United States*, 533 U.S. 27, (2001), unreasonable if performed without a warrant. (Op. at 6). However, it also held that because the search was permissible under the law in effect at the time it was performed, no deterrent purpose would be served by suppressing its result, citing *State of Wisconsin v. Richards*, 201 Wis. 2d 845, ¶¶52,62, 549 N.W.2d 218 (1996), referring to *United States v. Calandra*, 414 U.S. 338, 348 (1974). The court did point up contrary authority in the very recently decided case of *United States v. Acker*[1], 2001 WL 1021587 (7th Cir. 9 August 2001), "concluding that thermal imaging evidence obtained before *Kyllo* was decided must be suppressed". (Op. at 7)

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[1] The *Acker* decision is not published, and is mentioned here only because the Wisconsin Court of Appeals chose to glance at it in its opinion

The Wisconsin Court of Appeals further affirmed the denial of Loranger's Motion under *Franks v. Delaware*, 438 U.S. 154 (1978). It determined that the challenged omissions of purportedly material fact accurately stated the information contained in its supporting documents: the affidavit was not apparently false or reckless because it did not "disclose the month, season, or year on which the electric usage figures are based....[or] indicate that Arena, Wisconsin, which is the location of Loranger's home, is included in the figures; or...provide any specifications for the size, type of construction, heating and cooling system...or other data for an average 'residential customer.' (Op. at 10)

REASONS FOR GRANTING THE WRIT

1. THE WISCONSIN COURT OF APPEALS AFFIRMED A JUDGMENT ARISING FROM A CASE WHOSE SOLE EVIDENCE AROSE FROM A SEARCH WARRANT ISSUED ON THE BASIS OF A THERMAL IMAGERY SURVEY. COUNSEL HAD ARGUED THAT THE THERMAL IMAGERY WAS A SEARCH UNDER THE FOURTH AMENDMENT. THE STATE COURT HELD THAT A GOOD-FAITH EXCEPTION PERMITTED USE OF THE EVIDENCE SO OBTAINED

The thermal search of the Loranger home took place in May 1999, before this Court's holding in *Kyllo v. United States*, 533 U.S. 27 (2001). In *Kyllo*, this Court held that a thermal search such as the one carried out upon the defendant's home, was improper unless preceded by an appropriate search warrant. *Kyllo* at 34-35 . There is no dispute that Loranger was denied the protection of the Fourth Amendment as interpreted in *Kyllo*. The question remained as to whether a good faith exception could justify the use of evidence gained by execution of the search warrant in Loranger's case. Opinion of Wisconsin Court of Appeals ("Op.") at ¶¶10, 13-15 . The Wisconsin appellate court held that a"good faith" exception to the rule excluding from evidence the fruits of wrongful searches applied. Op. at

¶14. It reasoned that under then applicable Wisconsin law, as enunciated in *State v. McKee*, 181 Wis. 2d 354, 510 N.W.2d 807 (Ct. App. 1993), a thermal scan of a home does not amount to a search, and consequently does not require a warrant. It further held that Wisconsin law, as set forth in the case of *State v. Ward*, 2000 WI 3, 231 Wis. 2d 713, 604 N.W.2d 517, recognized the good faith of officers relying upon then existing law, and permitted the use of evidence obtained in (ultimately mistaken) good faith reliance on such law. Therefore, the Wisconsin court concluded, "the police relied on *McKee* in good faith and suppressing the evidence would serve no remedial purpose."

Wisconsin was fairly late in adopting the good faith exceptions to the exclusionary rule enunciated by this Court in *United States v. Leon*, 468 U.S. 897 (1984). *State v. Ward*, 2000 WI 3, 231 Wis. 2d 713, 604 N.W.2d 517 (good faith exception for acts taken in reliance upon existing law), for example, was decided in 2000, the year *after* the thermal search was illegally performed. At the time of the Loranger search, Wisconsin law simply did not protect the fruits of an illegal, but "good faith" search. Indeed, only last year did Wisconsin, in *State v. Eason*, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 625, adopt a good faith exception for facially valid warrants. The development of Fourth Amendment jurisprudence strongly requires clarification of the question of whether a good faith exception to the exclusionary rule exists when the law of the State whose officers carried out the illegal search did not (yet) recognize such an exception. Loranger contends that no benefit follows from allowing illegally seized evidence at trial unless the law of the jurisdiction expressly and unequivocally permits an exception for good faith error. Without such a requirement, law enforcement officers act without guidance and essentially outside the law. Trial and appellate courts should not be permitted to validate acts taken in violation of constitutional rights and without protection of law.

2. THE WISCONSIN COURT OF APPEALS SUSTAINED THE DENIAL OF A *FRANKS* MOTION AS TO AN AFFIDAVIT FOR A SEARCH WARRANT WHERE IT WAS APPARENT THAT THE OFFICER'S AFFIDAVIT IN SUPPORT OF THE SEARCH WARRANT CONTAINED NUMEROUS STATEMENTS WHOSE ACCURACY HE COULD NOT VOUCH FOR, AND WHERE HE FAILED TO VERIFY BASIC INFORMATION.

If our Constitution protects the security of our homes and property from unreasonable searches and seizures by requiring that warrants issue only upon probable cause, it must follow that the sworn statements made to demonstrate probable cause be made, at a minimum, responsibly. Although courts are generally deferential to decisions made by the warrant-granting official, if an appellate court finds that material facts were wrongfully omitted from the search warrant affidavit, then the affidavit should be reviewed for probable cause as if it had been redrafted to include the omitted information. *Franks v. Delaware*, 438 U.S. 154, 171-172 (1978). No such remand came from the Wisconsin Court of Appeals.

The trial court in Loranger held an evidentiary hearing on the 23rd of November 1999 at which the affidavit for search warrant was introduced into evidence, together with a report of Narcotics Enforcement Officer Jess' report (which included attachments containing purported electrical usage statistics). *See* Appendix (Search Warrant request and supporting affidavit). At the heart of Loranger's *Franks* motion was the discrepancy between the import of the original documents attached to the affidavit, and the misleading use of selections from the documents in Deputy Bennett's search warrant affidavit. Among the thirteen separate exculpatory facts known to Deputy Bennett but deliberately omitted from the affidavit, was the telling one that the Loranger family's use of electricity was only 1.1 kilowatts per month greater than the average in the area for apparently equivalent residences: that is, the defendant's

family used 1160 kw per month on the average, whereas the average usage in similar residences was 1158.9, a difference of approximately 1/10 of one percent. Transcript of 23 Nov. hearing at 18-27. In fact, the officer had not bothered to determine whether the Loranger household used electric heating or not, by examination of building plans or otherwise, even though a Narcotics Enforcement officer who later testified stated that as a police officer he did review building plans as part of his preparation. Id. at 25 and 45-46. After some hesitation, the Deputy claimed that Arena, where the Lorangers lived, is in the "Madison" area–even though it is 40 to 45 miles from Madison and its economy is based on farming, whereas Madison has no farms. Id. at 20. This certified police officer could not, in fact, state the distances between the Wisconsin cities whose urban areas were the subjects of the report on electricity usage. Id. at 22-23. Incredibly, the Narcotics Enforcement officer's report asserted that he had done a thermal scan of a "comparative" (*sic*) dwelling nearby, but nowhere in his report or in his testimony did he state whether the comparable dwelling's readings did or did not confirm the assertions about the heat emanating from the Loranger household.[2]

"Suppression therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth. Franks v. Delaware, 438 U.S. 154 (1978)." *United States v. Leon, 468 U.S. at 923.* There can be no "good faith" exception when a magistrate is deliberately (or recklessly) misled. The effect of all the omissions by the investigators in Loranger was to give the judicial officer who signed the search warrant the false impression that the officers knew the average electrical usage

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[2] When the tape of the thermal scan was actually viewed by the trial court, at the continued hearing on 1st February 2000, a witness who owned the comparable dwelling and who viewed the tape observed that a pile of dirt and debris had about the same degree of whiteness (i.e. quantity of heat emanating from it) as did the Loranger home. Trans. of 1 February 2000 at 12-13.

in the Arena area, and that the Loranger usage was materially higher than normal, and that the thermal scan confirmed the increased electrical usage by showing an increased discharge of heat from the home. None of this was so. All of it was, or should have been, known to the officers who testified. All of it was misleading.

In addition, Deputy Bennett admitted that much of the language of his sworn statement was false, or that he had done nothing to check his assertions of fact. He stated in the affidavit, for example, that controlled substance analogs were present on the premises. After some waffling and failures of memory regarding what his informant had told him, the officer thought that he had once believed that he had heard information about analogus, and he admitted that the presence of computers and currency and coins were not evidence of crime. Trans. 23 Nov. at 11-12. Although he swore that the premises contained "safes and strong boxes," and "accounting books [and] banking records", he admitted that this was simply a suspicion, and he did not know they were at the Loranger home. Id. at 13. The Wisconsin Court of Appeals did not find that these manifold conjectures vitiated the search warrant nor warrant the exclusion of evidence.

CONCLUSION

A writ of certiorari should be granted because the challenged decision of the Wisconsin Court of Appeals is contrary to the Constitution of the United States.

Respectfully submitted this 18th day of June 2002

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00-3364-CR

SUPREME COURT OF WISCONSIN

State

v.

Loranger

March 19, 2002, Decided

OPINION:

Petition for review is denied.

Appeal No. 00-3364-CR

COURT OF APPEALS OF
WISCONSIN, DISTRICT FOUR

State of Wisconsin,
Plaintiff-Respondent,

v.

Jeffrey L. Loranger,
Defendant-Appellant.

November 8, 2001, Submitted on
Briefs

December 20, 2001, Decided

December 20, 2001, Filed

COUNSEL:
On behalf of the defendant-appellant, the cause was submitted on the briefs of James C. Murray of Jacobson & Murray, S.C., Madison.
On behalf of the plaintiff-respondent, the cause was submitted on the brief of James E. Doyle, attorney general, and Christian R. Larsen, assistant attorney general.

JUDGES:
Before Vergeront, P.J., Dykman and Roggensack, JJ.

OPINIONBY:
DYKMAN

OPINION:

P1. DYKMAN, J. Jeffrey Loranger appeals from a judgment of conviction for manufacturing a controlled substance, maintaining a building for the use of

manufacturing controlled substances, and possessing a firearm as a felon. He filed a motion to suppress evidence seized at his home under a search warrant, which the circuit court denied. There are two primary issues. The first is whether suppression of evidence is the proper remedy when police performed a thermal image scan on Loranger's home without a warrant, relying in good faith upon our decision in State v. McKee, 181 Wis. 2d 354, 510 N.W.2d 807 (Ct. App. 1993). McKee held that no warrant was required. The second issue is whether sufficient facts were alleged in the affidavit supporting the search warrant to furnish a finding of probable cause.

P2. Kyllo v. United States, 533 U.S. 27, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001), held that use of a thermal imaging device to detect heat emanating from a home is a "search" within the meaning of the Fourth Amendment and thus presumptively unreasonable when performed without a warrant. Thus, officers violated the Fourth Amendment when, in 1999, they performed a thermal image scan on Loranger's home. However, because they relied upon McKee, which had concluded that use of a thermal imaging device was not a search, we conclude the evidence obtained in the search need not be suppressed. Further, we conclude that the results of the thermal image scan in combination with electricity records showing that Loranger used above average amounts of electricity, and a confidential informant's tip that he had seen marijuana growing in Loranger's basement, were sufficient to provide the warrant-issuing court commissioner with a substantial basis for finding probable cause to issue a warrant to search Loranger's house.

Background

P3. On May 6, 1999, Iowa County Deputy Sheriff Steve Bennett requested that the Iowa County court commissioner issue a warrant authorizing the search of Jeffrey Loranger's home. In his affidavit in support of the search warrant, Bennett stated that Special Agent Scott Jess had interviewed a confidential informant on April 19, 1999. The informant told Jess that approximately eighteen months ago, he had been in Loranger's house, and Loranger had shown the informant his

"marijuana grow operation." The informant observed "two to three green children's turtle pools filled with approximately 60-80 marijuana plants each." In addition, the informant observed "six to seven shop lights with cloned marijuana plants underneath them," one 1500 watt light bulb, and one 2000 watt light bulb.

P4. The affidavit also stated that, based on this tip, Special Agent Jess and Special Agent Gregory Phillips conducted a "thermal imagery site assessment" outside Loranger's home on May 5, 1999. The thermal imagery device indicated that "an unusual amount of heat was emanating from the wall of the northeast and north corner of the residence" in the basement area, but not from the roof. Further, according to Phillips, this suggested that the "unusual and uneven heat" was generated by "indoor grow lights, which are utilized for the indoor cultivation of marijuana."

P5. Finally, the warrant contained information regarding the electric power used at Loranger's residence as compared to "the average monthly kilowatt usage." For the period of May 1, 1998, to March 31, 1999, the affidavit alleged that, according to information provided by the Alliant Energy Company, the average monthly kilowatt hour usage at Loranger's home was 1464 kilowatt hours per month. Further, the affidavit alleged that the average monthly kilowatt usage for a residential home was between approximately 550 and 700 kilowatt hours per month.

P6. The court commissioner issued the warrant, and police searched Loranger's home, after which the State charged Loranger with one count of manufacturing a controlled substance under Wis. Stat. § § 961.41(1), 961.41(1)(h)1, and 961.14(4)(t), one count of maintaining a building for the use of manufacturing controlled substances under Wis. Stat. § 961.42(1), and five counts of possessing a firearm as a felon under Wis. Stat. § 941.29(1)(b) . In response, Loranger moved to suppress all evidence obtained by the State as a result of the thermal search and the subsequent search of his home. Loranger claimed that the warrantless thermal search was illegal and therefore could

not provide probable cause to execute a warrant to search his home. In addition, Loranger filed a motion under Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978), to suppress the same evidence, arguing that the State had omitted facts from the affidavit in support of the search warrant that, if included, would have demonstrated that there was no probable cause to issue a warrant.

P7. The circuit court held evidentiary hearings on November 23, 1999, and February 1, 2000, after which it denied both of Loranger's motions. The court concluded that "the current position of Wisconsin authority holds that the use of a thermal imaging device ... is not a search within the meaning of the Fourth Amendment," and that Loranger had not proven by a preponderance of the evidence that Bennett made intentional falsehoods or showed a reckless disregard for the truth in his affidavit. Finally, the court concluded that the affidavit contained sufficient facts to support a finding of probable cause.

P8. Loranger pleaded no contest to one count each of manufacturing a controlled substance, maintaining a building for the use of manufacturing controlled substances, and possessing a firearm as a felon. The circuit court sentenced Loranger to a total of five years in prison, but stayed the sentence pending appeal.

Opinion

A. Thermal Search

P9. Loranger first argues that the officers' use of a thermal imaging device to detect heat emanating from his home was a "search" within the meaning of the Fourth Amendment and article I, § 11, and was therefore unlawful because it was conducted without a warrant. Loranger further asserts that the evidence obtained through the thermal search should have been suppressed. The question whether police conduct violated the Fourth Amendment or article I, § 11, is a question of constitutional fact. See State v. Marquardt, 2001 WI App 219, P9, 247 Wis. 2d 765, 635 N.W.2d 188. We review questions of constitutional fact independently of the circuit court. See id.

P10. We agree with Loranger that the use of a thermal imaging device to detect heat emanating from his home was a search under the Fourth Amendment and was therefore presumptively unreasonable. We disagree, however, that the evidence obtained through the search must be suppressed as a result.

P11. In State v. McKee, 181 Wis. 2d 354, 510 N.W.2d 807 (Ct. App. 1993), we considered "whether the use of an infrared sensing device to detect heat emanating from [a] residence constitutes a 'search' within the meaning of the Fourth Amendment." Id. at 356. Reasoning that heat emanating from a residence "may be considered 'waste,'" similar to "refuse left outside the house in bags and cans," and that heat sensing devices are similar to sniffing dogs in that they detect an object's interior in a non-intrusive manner, we concluded that it did not. 181 Wis. 2d at 361-63. At the time McKee was decided, neither the Wisconsin nor the United States Supreme Court had addressed this issue.

P12. McKee, however, was implicitly overruled by Kyllo v. United States, 150 L. Ed. 2d 94, 533 U.S. 27, 121 S. Ct. 2038 (2001). In Kyllo, an agent from the Department of the Interior used a thermal imaging device to detect heat emanating from the defendant's home without first obtaining a warrant. 121 S. Ct. at 2041. The Supreme Court held that this violated the Fourth Amendment. The Court rejected the United States' argument that thermal imaging is not a search because it detects "only heat radiating from the external surface of the house," reasoning that accepting such an argument would lead to a "mechanical interpretation of the Fourth Amendment," and "would leave the homeowner at the mercy of advancing technology." 121 S. Ct. at 2044. The Court concluded: "Where, as here, the Government uses a device that is not in general public use, to explore details of the home that would previously have been unknowable without physical intrusion, the surveillance is a 'search' and is presumptively unreasonable without a warrant." 121 S. Ct. at 2046.

P13. In accordance with Kyllo, we conclude that the State violated the Fourth Amendment when it used a thermal

imaging device to detect heat coming from Loranger's home. See State v. Pitsch, 124 Wis. 2d 628, 641, 369 N.W.2d 711 (1985) (holding that Wisconsin courts are bound by Supreme Court's interpretations of the federal constitution). This does not end the inquiry, however. In State v. Ward, 2000 WI 3, 231 Wis. 2d 723, 604 N.W.2d 517, the supreme court concluded that police had violated the rule of announcement under the Fourth Amendment and article I, § 11, when they entered the defendant's residence with a no-knock warrant, contrary to Richards v. Wisconsin, 520 U.S. 385, 137 L. Ed. 2d 615, 117 S. Ct. 1416 (1997). 2000 WI 3 at P42. Nevertheless, because the police and the magistrate who issued the no-knock warrant relied upon the Wisconsin Supreme Court's decision in State v. Richards, 201 Wis. 2d 845, 549 N.W.2d 218 (1996), which was still good law when the magistrate issued the warrant, the supreme court concluded that the evidence did not have to be suppressed. 2000 WI 3 at P52, 62. The court reasoned that the exclusionary rule is a "'judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect.'" 2000 WI 3 at P46 (quoting United States v. Calandra, 414 U.S. 338, 348, 38 L. Ed. 2d 561, 94 S. Ct. 613 (1974)). Because no remedial purpose would be served by excluding evidence "when the officers and magistrate followed, rather than defied, the rule of law," the evidence was deemed admissible. 2000 WI 3 at P52.

P14. Applying the holding of Ward here, we must likewise conclude that the evidence obtained through the thermal imaging device is admissible. In May 1999 when police used the device to detect heat emanating from Loranger's home, Kyllo had not yet been decided, and McKee was applicable. Therefore, the police relied on McKee in good faith and suppressing the evidence would serve no remedial United States v. Acker, 2001 U.S. App. LEXIS 19837, 2001 WL 1021587, (7th Cir. Aug. 9, 2001) (concluding that thermal imaging evidence obtained before Kyllo was decided must be suppressed).

P15. Loranger contends that Ward is distinguishable because it involved "the issue of how a search should be conducted rather than whether the search itself is

permissible." Although this observation is correct, there is no language in Ward to suggest its holding was limited to improperly issued no-knock search warrants. Rather, the court broadly stated that "we believe that law enforcement officers and magistrates must be allowed to reasonably rely upon the pronouncements of this court." 2000 WI 3 at P62. Although "this court" could be interpreted as meaning only the decisions of the supreme court and not the court of appeals, we see no logical reason to distinguish between published opinions of the court of appeals and the supreme court in this context. Even the dissent in Ward recognized that the "majority opinion applies to any published opinion of the court of appeals or this court authorizing a search when the decision is later declared unconstitutional." 2000 WI 3 at P88 (Abrahamson, C.J., dissenting).

P16. Loranger's reliance on the limitations of the holding in State v. Eason, 2001 WI 98, 245 Wis. 2d 206, 629 N.W.2d 625, is misplaced. In Eason, the supreme court held that "a good faith exception for objective, reasonable reliance upon a search warrant does not offend the Wisconsin Constitution." 2001 WI 98 at P52. Loranger argues that in this case, unlike Eason, there was no "objectively reasonable reliance upon [a] warrant, which had been issued by a detached and neutral magistrate." In addition, Loranger asserts that the State failed to meet its burden under Eason, to show that there had been a "significant investigation and a review by either a police officer trained and knowledgeable in the requirements of probable cause and reasonable suspicion, or a knowledgeable government attorney." Eason did not hold, however, that the State must show both that it relied upon Wisconsin case law and that it reasonably relied upon a search warrant. Eason does not address reliance on case law at all, but involved only reliance on warrants. The holding in Eason, therefore, does not apply here.

B. Franks Motion And Probable Cause

P17. The affidavit in support of the search warrant alleged that because strong lights are needed to grow marijuana indoors and these lights must operate continuously, those involved in the "indoor cultivation of marijuana" will use

greater amounts of electricity than average. The affidavit also stated that Special Agent Jess had reviewed records of Loranger's power usage, provided by Alliant Energy Company, from April 30, 1996, to March 31, 1999. According to the affidavit, Loranger's average monthly kilowatt hour usage was 914 kilowatt hours per month from April 30, 1996, to April 2, 1997, 1102 kilowatt per month from May 1, 1997 to April 1, 1998, and 1464 kilowatt hours per month from May 1, 1998, to March 31, 1999.

P18. The affidavit also contained the following two paragraphs:

> Agent Jess has stated that he has reviewed documents provided by CEASE (Cannabis Enforcement and Suppression Effort) State Coordinator Stan Blazek. CEASE is a law enforcement program administered by the Wisconsin Department of Narcotics Enforcement that functions to eradicate cannabis.
>
> The first CEASE document, dated October, 1997, indicated that the average monthly kilowatt usage for a residential house in the Madison, WI regional area was 600 kilowatt hours per month. The second CEASE document, dated July 29, 1997, indicated the average monthly kilowatt usage for a single family residence was 708 kilowatt hours per month. The information contained in this document was provided to CEASE by Madison Gas & Electric Company. The third CEASE document, received by CEASE on August 22, 1997, indicated that the residential customers living within a village or city use approximately 560 to 600 kilowatt hours per month and residential customers living in a township have a slightly higher average of 650 kilowatt hours per month. The document indicated that individual conditions such as heat source and lifestyle will cause deviations from the above numbers. The information contained in the document was provided to CEASE by Wisconsin Power & Light.

P19. Loranger asserts that the above paragraph contains "wrongful omissions," contrary to Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978). Under Franks, a court is obligated to suppress evidence obtained from a search if, at an evidentiary hearing, the defendant can establish by a preponderance of the evidence that the affidavit in support of the search warrant contained false statements made intentionally or with reckless disregard for the truth and that the false statements are necessary to a finding of probable cause. Id. at 156. Loranger argues that he satisfied this test by showing that the affidavit failed to point out the limitations of the electrical statistics that it relied upon.

P20. In his brief in chief, Loranger points out that the documents the affidavit refers to do not: (1) disclose the month, season, or year on which the electric usage figures are based; (2) indicate that Arena, Wisconsin, which is the location of Loranger's home, is included in the figures; or (3) "provide any specifications for the size, type of construction, heating and cooling system, appliances and other furnishings, number of occupants, or other data for an average 'residential customer.'" In addition, he notes that the documents indicate that air conditioning or electric heating can increase energy consumption.

P21. Although we agree with these observations, we disagree that they demonstrate the affidavit was made with reckless disregard for the truth. Rather, the affidavit accurately reflects the information that is contained in the documents. The affidavit does not allege that the statistics regarding average usage were specific to a particular season or year, or that they included Arena, Wisconsin. And the affidavit expressly points out that "individual conditions such as heat source and lifestyle will cause deviations from the above numbers." The issue, therefore, is not whether the affidavit included false statements, but whether the electrical usage information contained in the affidavit, as limited as it was, supported a finding of probable cause.

P22. In our review of a warrant-issuing court commissioner's finding of probable cause, we accord "great

deference," to the commissioner's determination. State v. Multaler, 2001 WI App 149, P24, 246 Wis. 2d 752, 632 N.W.2d 89. The test for the issuance of a search warrant is whether, considering the totality of the circumstances set forth in support of the warrant, probable cause exists to believe that objects linked to the commission of a crime are likely to be found in the place designated in the warrant. State v. Jackowski, 2001 WI App 187, P10, 247 Wis. 2d 430, 633 N.W.2d 649. The warrant-issuing court commissioner must be apprised of sufficient facts to excite an honest belief in a reasonable mind that the objects sought are linked with the commission of a crime, and that the objects sought will be found in the place to be searched. State v. Meyer, 216 Wis. 2d 729, 742, 576 N.W.2d 260 (1998). The duty of a reviewing court is simply to ensure that the commissioner had a substantial basis for concluding that probable cause existed. State v. Hanson, 163 Wis. 2d 420, 423, 471 N.W.2d 301 (Ct. App. 1991).

P23. Viewing the totality of the circumstances, we conclude that the issuing court commissioner had a substantial basis for concluding that probable cause existed. We agree with Loranger that the comparative statistics regarding Loranger's versus the "average" use of electricity could have been more specific. Not knowing exactly when or where the "average" figures were extracted diminishes their value. Loranger does not challenge the veracity, however, of the information that was provided. The affidavit alleged that the average monthly kilowatt hour usage for Loranger's residence was 1464 kilowatt hours per month. This was more than double each of the comparative averages provided in the affidavit. It would not be unreasonable to infer that a disparity of 100% is unlikely to be explained based upon the year or what part of the state the statistics came from. Although these statistics would not be sufficient to support a finding of probable cause on their own, see United States v. Field, 855 F. Supp. 1518, 1520 (W.D. Wis. 1994), they are supported by the results of the thermal imaging scan, which were consistent with the heat generated by lights used to grow marijuana indoors.

P24. In addition, the affidavit relied upon a tip from a confidential informant. Loranger contends that the warrant-issuing commissioner could not rely upon this tip because it was based on information almost eighteen months old. Although search warrants may not rest on stale evidence, Sgro v. United States, 287 U.S. 206, 210, 77 L. Ed. 260, 53 S. Ct. 138 (1932), whether evidence is "stale" is not determined "by counting the time 'between the occurrence of the facts relied upon and the issuance of the warrant.'" Multaler, 2001 WI App 149 at P28 (quoting State v. Ehnert, 160 Wis. 2d 464, 469, 466 N.W.2d 237 (Ct. App. 1991)). Rather, "timeliness depends on the nature of the underlying circumstances." Ehnert, 160 Wis. 2d at 469. Because marijuana growing is of a continuous nature, greater lapses of time are justified. United States v. Greany, 929 F.2d 523, 525 (9th Cir. 1991). Further, the combination of the informant's tip and the more recent electricity records and thermal imaging results suggested that the operation was ongoing. See State v. Moley, 171 Wis. 2d 207, 213-14, 490 N.W.2d 764 (concluding that "old information" may be combined with "new data to create present probable cause"). In sum, we conclude that probable cause existed to believe that objects linked to the commission of a crime were likely to be found in Loranger's residence. See United States v. Robertson, 39 F.3d 891, 894 (8th Cir. 1994) (holding that detailed information supplied by an anonymous informant in combination with infrared readings furnished probable cause to issue search warrant of defendant's home).

By the Court.-Judgment affirmed.

STATE OF WISCONSIN CIRCUIT COURT IOWA COUNTY

SEARCH WARRANT

STATE OF WISCONSIN
Iowa County) ss

THE STATE OF WISCONSIN, To the sheriff or any constable or any peace officer of said county:

Whereas, Iowa County Deputy Sheriff Steve Bennett has this day complained in writing to the said court upon oath that on the 6th day of May, 1999, in said county, in and upon certain premises in the Town of Arena in said county, occupied by Este Dinur, Jeffrey Loranger, and Valerie Brandt, and more particularly described as follows:

a residence located at the address of 7080 County Highway H, Arena, WI 53503. The residence is located on the west side of County Hwy. H facing east. The residence is a one-story house with a two-car garage located on the north side of the house. The house has a raised basement. The garage is connected to the house by a breezeway. The house has white siding with brown wood siding located, on the top left portion of the front of the house. The property contains an unknown number of outbuildings. The legal description of the property, including land outbuildings is on, is "[p]art of the Southeast Quarter of the Northwest Quarter of Section 19, Township 8 North, Range 5 East, Town of Arena, Iowa County Wisconsin, described as commencing at a point on the East line of said Southeast Quarter of the northwest Quarter 1850.48 feet South of the point of intersection of the centerline of County Highway "H" and the centerline of U.S. Highway #14 from the East, thence South 215 feet along said East line, thence West 198 feet, thence North parallel with said East line 215 feet, thence East 198 feet to the point of the beginning."

there are now located and concealed certain things to wit:

1) Controlled substances as defined in sec 961.01940, Stats.
2) Controlled substance analogs as defined in sec. 961.01(4m), Stats.
3) Drug Paraphernalia as defined in sec 961.571, stats.
4) Documents, records, or recordings of the sale of controlled substances. Said records may be in written, recorded, or electronic form. Records of transactions, including but not limited lo lists of names, addresses, telephone numbers and/or dollar amounts.
5) Computer harddrives, disks, CD-ROM discs other computerized records relating to the sale of controlled substances.
6) U.S. currency and coins.
7) Identifying documentation which tends to establish the identity of those residing at the residence; including but not limited to mail, bills, and other written documentation establishing the identity of the residents of 7080 County Highway H.
8) Items used for the safekeeping of valuables, including but not limited to safes and strong boxes.
9) Financial records, including but not limited to accounting books, banking records, and other documents tending to identify assets.
10) Firearms and weapons.
11) Video and audio recordings, including but not limited to video recorders, commonly called camcorders, audio tapes, video tapes, cassettes, photographs.
12) All electronic devices and equipment including pagers, computers, cellular phones, and any memory or data contained therein. -
13) Unnamed occupants.
14) Publications or documents relating to the propagation of controlled substances, e.g. (but not limited to) High Times.

which things were used in the commission of, or may constitute evidence of, a crime to wit: manufacturing of a controlled substance committed, in violation of section

961.41(1)(h) 1, - of the Wisconsin statutes and sec. 961.14(4)1), stats.

and prays that a search warrant be issued to search said premises for said property.

The Court, having found probable cause based on the affidavit in support of this warrant states that now, therefore, in the name of the state of Wisconsin you are commanded forthwith to search the said premises for said things, and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found, and return this warrant within 48 hours before the said court to be dealt with according to law.

You arc further authorized to search all occupants of said residence.

You are further authorized to execute this warrant without knocking and announcing your presence.

Dated this 6th day of May, 1 999

/s/
Court Commissioner
Jim Pope

ENDORSEMENT ON WARRANT
Received by me Deputy Steve Bennett,
May 6th, 1999, at 2:15 o'clock P. M

/s/
Deputy Sheriff

STATE OF WISCONSIN CIRCUIT COURT IOWA COUNTY

AFFIDAVIT IN SUPPORT OF SEARCH WARRANT

STATE OF WISCONSIN
Iowa County)ss

Iowa County Deputy Sheriff Steve Bennett, being duly sworn, says that on the 6th day of May, 1999, in said county, in and upon certain premises in the Town of Arena in said county, occupied by Jeff Loranger, Este Dinur, and Valerie Brandt and mere particularly described as follows:

a residence located at the address of 7080 County Highway H, Arena, WI 53503. The residence is located on the west side of County Hwy. H facing east The residence is a one-story house with a two-car garage located on the north side of the house The house has a raised basement The garage is connected to the house by a breezeway The house has white siding with brown wood siding located on the top left portion of the front of the house. The property contains an unknown number of outbuildings. The legal description of the property, including land outbuildings is on, is [p]art of the Southeast Quarter of the Northwest Quarter of Section 19 Township 8 North, Range 5 East, Town of Arena, Iowa County, Wisconsin, described as commencing at a point on the East line of said Southeast. Quarter of the northwest Quarter 1850.48 feet South of the point of intersection of the centerline of County Highway "H" arid the centerline of U.S. Highway #14 from the East, thence South 215 feet alone said East line, thence West 198 feel, thence North parallel with said East line 215 feet, thence East 198 feet to the point of the beginning."

there are now located and concealed certain things, to wit:

1) Controlled substances as defined in sec. 961 .01(4), Stats.
2) Controlled substance analogs as defined in sec. 961.01(4m), Stats.
3) Drug Paraphernalia as defined in sec. 961.571, stats.
4) Documents, records, or recordings of the sale of

controlled substances. Said records may be in written, recorded, or electronic form. Records of transactions, including but, not limited to lists of names, addresses, telephone numbers, and/or dollar amounts.

5) Computer harddrives, disks, CD-ROM discs, or other computerized records relating to the sale of controlled substances.
6) U.S. currency and coins.
7) Identifying documentation which tends to establish the identity of those residing at the residence, including but not limited to mail, bills, and other written documentation establishing the identity of the residents of 7080 County Highway H.
8) Items used for the safekeeping of the valuables including but not limited to safes and strong boxes.
9) Financial records including but not limited to accounting books, banking records, and other documents tending to identify assets.
10) Firearms and weapons.
11) Video and audio recordings, including but not limited to video recorders, commonly called camcorders, audio tapes, video tapes, cassettes, photographs.
12) All electronic devices and equipment including pagers, computers, cellular phones, and any memory or data contained therein.
13) Unnamed occupants.
14) Publications or documents relating to the propagation of controlled substances, e.g. (hut not limited to) High Times.

which things were used in the commission of, or may constitute evidence of, a crime to wit: manufacturing of a controlled substance committed in violation of section 961.41(1)(h)1 of the Wisconsin statutes and sec. 961.14(4)(t), stats.

The facts tending to establish the grounds for issuing a search warrant are as follows:

Your complainant is a Deputy Sheriff for the Iowa County Sheriff's Department. Your complainant states that he has executed more than 30 search warrants in his career. Your complainant has been the primary controlled substance officer for Iowa County for over 10 years. Your complainant has been trained in the area of apprehension and detection of controlled substances users and manufacturers by the United States Drug Enforcement Agency, the Wisconsin Narcotics Officers Association, the Wisconsin Crime Lab, and the Federal Bureau of Investigation, among others. Your complainant has also been trained in the identification of habits and customs of individuals engaged in narcotics trafficking.

Based on your complaint's training and experience, he knows the following:

a. That drug traffickers or manufacturers often place assets in names other than their own to avoid detection of these assets by governmental agencies;
b. That even though these assets are in other persons' names, the drug traffickers or manufacturers continue to use the assets and exercise immediate control over them;
c. That individuals who derive their income or a large portion of their income from the sale of controlled substances commonly maintain on hand large amounts of U.S. currency in order to maintain and finance their ongoing narcotics business;
d. That drug traffickers and manufacturers often maintain books, records, receipts, bank statements, and documents relating to safety deposit boxes and other documents evidencing money transactions;
e. That it is common for drug traffickers to secrete contraband proceeds of drug sales large amounts of currency, financial instruments and records of drug transactions in; secure locations within their residence, storage units and mail boxes associated

with their residence, and outbuildings on their property for ready access and to conceal those items from law enforcement authorities.

f That drug **traffickers** commonly maintain address or telephone numbers in books or papers and to collect **names, addresses** and/or **telephone** numbers of their **associates** in the drug **trafficking** and manufacturing organization;

g. That drug traffickers commonly maintain in their possession firearms at their residence, place of distribution of controlled substances, or vehicles used by drug traffickers or manufacturers in order to facilitate the distribution of controlled substances to protect themselves from other traffickers or manufacturers of law enforcement officers;

h. That drug traffickers often possess papers, utility bills, telephone bills, photographs, etc., which tend to identify them as occupant of the residence in which they are manufacturing or trafficking in narcotics;

i. That drug traffickers often possess packaging materials, scales, and other paraphernalia associated with the storage and distribution of controlled substances Such packaging materials can include baggies, torn or cut off baggie corners, vials, cut out pieces of paper from magazines to be formed in the shape of pharmaceutical folds, such diluents, including but not limited to inositol and mannitol;

j.That drug traffickers and manufactures often possess a variety of controlled substances, including but not limited to cocaine, marijuana, LSD, heroine, diverted prescription drugs, etc.;

k. That individuals engaged in drug trafficking often use motor vehicles to facilitate the transportation and sale or manufacture of controlled substances;

l. That individual engaged in drug trafficking often secrete evidence of drug trafficking within motor vehicles, and that such vehicles often, contain secret compartments utilized to store and secrete controlled substances;

m. That individuals engaged in drug trafficking often utilize vehicles which are not registered in their own names to facilitate the transportation, sale, or secretion of controlled substances;

n. That individuals engaged in drug trafficking often utilized

other individuals who associate with, narcotics trafficker's to assist in the possession arid secretion of these narcotics and associated paraphernalia, these individuals often possess evidence of narcotics possession, use and/or trafficking on their persons. Your complainant states that in executing numerous search warrants targeting narcotic users, traffickers or manufacturers in which your complainant has participated, your complainant has observed numerous individuals who were present at said premises where the warrant was executed who possessed controlled substances and drug related paraphernalia on their persons, and that these persons include but are not limited to person helping with the sales of controlled substances, potential drug buyers and drug users among others;

o. That individuals engaged in drug trafficking often secrete evidence of drug trafficking on their person;

p. That during the execution of search warrants regarding drug trafficking and manufacturers, evidence of individuals identity and ownership of vehicles and property location of residence, and other such documents are often located in the form of driver's licenses vehicle registration forms rent receipts, etc.;

q. That individuals engaged in drug I trafficking often accept stolen property such as clothing items and electronic equipment in exchange for controlled substance 1

r That individuals engaged in narcotics trafficking and their **associates** often possess electronic devices; such as pagers, computers, and cell phones, **which** are utilized by narcotics traffickers and manufacturers and their associates; that pagers, computers, and/or cell phones often electronic memory capabilities, and as such electronic memory **often contains evidence of narcotics** trafficking, such as telephone numbers and/or other information of other individuals who assist the narcotics traffickers and manufacturers in the distribution and/or purchase of narcotics; these telephone numbers and other memory information, provide additional information to law enforcement concerning the extent of any narcotics trafficking

activities as well as identifying other individuals engaged in narcotics trafficking with the **individual** possessing the electronic devices;

s. Your complainant knows that individuals who engage in narcotics trafficking often possess **evidence** of narcotics trafficking **in their** residence and **vehicles, such** evidence **including such items as scales, packing materials,** diluents, firearms, U.S. currency, names and address records of narcotics **trafficking** associates, **etc. Your** complainant states that these items are often present in trafficker's residences and vehicles, whether or not the actual narcotics transactions take place within the trafficker's residence and vehicles.

Your complainant was informed by reading the reports of Special Agent Scott **Jess of the** following:

Scott Jess is a special agent for **the** Wisconsin Department of Justice Division of Narcotics Enforcement. Ness is a certified Law Enforcement Officer by the Wisconsin Law Enforcement Standards Board. Ness has participated in numerous investigations and arrests concerning violations of the Wisconsin Uniform Controlled Substances Act. Jess has received training in drug investigation techniques from the Wisconsin Department of Justice- Division of Narcotics Enforcement and the U.S. Department of Justice - Drug Enforcement Administration. Jess is familiar with the methods that drug dealers use to smuggle drugs. Jess has participated in, the execution of numerous search warrants in which controlled substances and drug paraphernalia were seized.

Ness stated that on April 22, 1 999, he had contact with Lynn Warwick of the Milwaukee Postal Inspector's Office. Warwick stated that the recipients of mail at the address of 7080 County Highway H, Arena, WI 53503 were Este Dinur., Jeff Loranger, and Valerie Brandt.

On Monday, April 19. 1999. Jess interviewed John Doe., a

confidential informant Doe stated that approximately 1 ½ years ago Doe went fishing with Jeffrey Loranger. After fishing Doe accompanied Loranger to Loranger's residence a i 7080 County Highway H in Arena in order to drink some beer. Upon arriving Doe observed an unknown white male give Loranger money in exchange for marijuana. Doe stated that while at the residence, Loranger took Doe downstairs and showed I Doe Loranger 's marijuana growth operation. Doe observed two to three green children's turtle pools I filled with 60-80 marijuana plants each Doe observed seven shop with cloned marijuana plants underneath them. Doe also observed one 600 watt light bulb and one 2000 watt light bulb. Doe also observed fans in the room of the marijuana grow.

Doe stated that the front room was in a partitioned off room in the basement area of the residence on the side of the house closest to the road in the front of the house.

Loranger told Doe that Loranger's grow method was the "Sea of Green" method as described in High Times magazine. Loranger stated that he obtained marijuana seeds through the mail from Amsterdam via Massachusetts. Loranger claimed to make $16,000 a week in marijuana sales. Loranger sold his marijuana for $400 to $500 an ounce Loranger claimed to be involved with two doctors, two lawyers, and two Madison Police Officers. Loranger was planning on expanding the size of his marijuana grow operation.

Doe further stated that Loranger had shotguns or rifles that Loranger used for hunting.

On Wednesday, May 5. 1999, at approximately 1:25 A.M., Special Agent Jess and Special Agent Gregory Phillips made contact in the area of the Loranger residence at 7080 County Highway H in Arena. The agents utilized a FSI thermal imager model seeker serial number R 117, with attached 8mm video recorder to conduct a thermal imagery site assessment of the structure on the property located at

7080 County Highway
H. The thermal imagery was conducted while on foot from the field and road adjacent to the property and directly east and west of the property. Further, a thermal imagery site assessment was conducted of the south side of the property.

Your complainant states that Agent Phillips has been trained in the use of said thermal imager and upon information and belief Agent Phillips is proficient in the use of said thermal imager and has used said imager in the past.

The agents observed that an unusual amount of heat, was emanating from the wall of the northeast and north corner of the residence. In particular, there was a heat pattern observed emanating from the northeast wall starting just past the front steps and going north to the corner of the building. It should be noted there were bushes in front of the southeast corner running up to the area where the heat pattern was noticed, just before the steps leading to the door, and through the bushes there was some heat detected in that area also. The agents observed that while conducting a thermal imagery site assessment on the east side of the building, there did not appear to be any unusual amount of heat emanating from the roof area. The roof, in general, appeared to be cool. The agents stated that based upon the visual observation using the thermal imager, there appeared to be an unexplained heat source starting on the north side of the residence in the middle of the residence in the northeast corner of the residence in the basement area. Special Agent Phil lips stated that based upon training and experience, the physical evidence obtained utilizing the thermal imager would be consistent with the unusual and uneven heat generated by indoor grow lights, which are utilized for the indoor cultivation of marijuana At approximately 1:50 A.M. on May 5, 1999, contact with the residence at 7080 County H. was terminated and all surveillance activity ceased. A thermal imagery site assessment was subsequently conducted and recorded on a comparative structure located in the general

vicinity of the subject residence.

On Wednesday, May 5, 1999, Special Agent Jess reviewed copies of the electric power usage information relating to the residence of Jeffrey Loranger at 7080 County Highway H. in Arena. The copies of the power usage information were provided by Alliant Energy Company to Sauk County Deputy Sheriff Terry Shifflet. The records provided electric power usage from 04-30-96 to 03-3 1-99.

Jess stated that flow April 30, 1996 to April 2, 1997, the kilowatt hour usage per month ranged from an estimated reading of 457 kilowatt hours to a verified reading of 1507 kilowatt hours per month. Jess stated that the average monthly kilowatt usage for this period was approximately 914 kilowatt hours per month, Jess stated that from May 1, 1997 through April 1, 1998, the kilowatt hour usage per month ranged from a reading of 435 kilowatt hours to a verified reading of 1882 kilowatt hours per month. The average monthly kilowatt hour usage for this period was approximately 1102 kilowatt hours per month.

From May 1, 1998 through March 31, 1999, the kilowatt hour usage per month ranged from, an estimated reading of 705 kilowatt hours to a verified reading of 3490 kilowatt hours per month. The average monthly kilowatt hour usage for this period was approximately 1464 kilowatt hours per month Your complainant states that strong lights are commonly used in the **indoor cultivation** of marijuana, and such lights must operate continuously during periods of **the** plants growth cycle, resulting in increased electrical consumption and, by inference, increased heat within the building.

Agent Jess has stated that he has reviewed documents provided by CEASE (Cannabis Enforcement and Suppression Effort) State Coordinator Stan Biazek CEASE is a law enforcement program administered by the Wisconsin Department of Narcotics Enforcement that functions to eradicate cannabis.

The first CEASE document, dated October, 1997, indicated that the average monthly kilowatt usage for a residential house in the Madison, WI regional area was 600 kilowatt hours per month. The second CEASE document, dated July 29, 1997, indicated the average monthly kilowatt usage for a single family residence was 708 kilowatt hours per month. The information contained in this document was provided to CEASE by Madison Gas & Electric Company. The Third CEASE document, received by CEASE on August 22, 1997, indicated that the residential customers living within a village or city use approximately 560 to 600 kilowatt hour per month and residential customers living in township have a slightly higher average of 650 kilowatt hours per month. The document indicated that individual conditions such as heat source and lifestyle will cause deviation from the above numbers the information contained in the document was provided to CEASE by Wisconsin Power & Light.

Your complainant has further observed a copy of the criminal history of Jeffrey Loranger. Said record indicates that Loranger was convicted in 1975 of assaulting a federal officer. Loranger received a five year prison sentence for this offense. Further, Loranger was arrested in 1981 For Assault III and Intent to Cause Bodily Harm. In light of this in light of the indoor grow operation and the potential for destruction of evidence, and in light of the fact that John Doe indicated there were weapons at the Loranger residence your complainant requests that this warrant he executed without requiring officers to knock and announce their presence.

Your complainant states that it is common to find unnamed occupants on the when executing warrants such as this one. Your complainant states that such occupants often have control led substances or paraphernalia on their persons. Your complainant requests that this warrant be issued authorizing the search of all unnamed occupants said residence.

Your complainant believes the information provided by Alliant Energy, Wisconsin Power & Light, and Madison Gas

and Electric to be reliable because they have provided reliable information in the past. Your complainant believes the information, provided by Ms. Warwick because she is a citizen informant. Your complainant believes the information provided by John Doe is reliable because your complainant has independently verified information provided by John Doe, specifically that Loranger's residence is using excessive electricity and is emanating excessive heat from the basement, consistent with a possible indoor grow operation and thus consistent with the information provided by John Doe. Your complainant believes the information provided by Deputy Shifflet, Special Agent Jess. CEASE Coordinator Stan Blazek and Special Agent Phillips is reliable as they a are law enforcement officers who have provided reliable information in the past

Wherefore, your complainant prays that search warrant he issued to search such premises and all unnamed occupants for the said property and to bring the same, if found, and the person in whose possession the same is found, before the said court to he dealt with according to law. Your complainant requests that this search warrant authorize a no-knock entry.

Complainant

Subscribed to and sworn to before me this 6th day of May, 1999.

Court Commissioner Jim Pope

DRAFT

1. Case Number	2. Date	3. Case Title
DD 10140	05/06/99	SEE OF GREEN

4. Activity	5. Date of Activity
Examination of Records	May 6, 1999

On Thursday, May 6, 1999, S/A Scott J. Jess reviewed documents provided by Cannabis Enforcement and Suppression Effort (CEASE) State Coordinator Stan Blazek. CEASE is a law enforcement program administered by the. Wisconsin Division of Narcotics Enforcement that functions to eradicated cannabis.

The first CEASE document dated October, 1 997, indicated that the average monthly kilowatt usage for a residential house in the Madison, WI regional area was 600 kilowatt hours per month.

The second CEASE document dated July 29, 1997, indicated that the average monthly kilowatt usage for a single family residence for 1996 was 708 kilowatt hours per month The information contained in the document was provided to CEASE by Madison Gas & Electric Company. The average represents all electric use except electric space heat

The third CEASE document, received by CEASE on August 22, 1997, indicated, that the residential customers living within a village or city use approximately 560 to 600 kilowatt hours per month and residential customers living in a township have a slightly higher average of 650 kilowatt hours per month. The document indicated that individual conditions such as heat source and lifestyle will cause deviations from the above numbers. The information contained in the document was provided to CEASE by Wisconsin Power & Light

S/A Scott J. Jess

CEASE HARVEST
October, 1997

CEASE Statistics: (January - September, 1997).

Indoor Grows:	168
Plants Seized:	7,942,450
Bulk Seized:	201.47 lbs.
Arrests:	301
Assets Seized:	$240,935

UTILITY THEFT/DIVERSION

As Wisconsin's cold weather approaches, growers will be moving their operations indoors. Successful indoor grow operations must use lighting to assist marijuana plant growth. The following list outlines average utility usage for residential and farm customers. Please note that the kilowatt usage (kWh) for a farm is for a working farm; not to be confused with non-working farm or rented farmhouse situation

Regional WI Area	Monthly Usage (kWh)	
	Residential	Farm
Appleton Area	700	N/A
Eau Claire Area	750	2,470
Madison Area	600	1,750
Milwaukee Area	695	N/A

Enclosed you will find information on the "warning signs" for indoor marijuana grows as well, as a typical grow room.

CEASE Intelligence Reports

Only use CEASE Form 5, Marijuana Indoor/Outdoor Cultivation Intelligence report, for cultivated grows not ditchweed.

NOTE: Tended, wild marijuana plants are counted as cultivated plants (e.g. evidence of pruning, trimming, cloning, fertilizing, watering, separating the male plants from the female, etc.).

INTELLIGENCE HUNTING

In the past, intelligence from hunters in the area has provided valuable information concerning old grow sites, especially cultivated plots (tended wild and outdoor grows). It may prove useful to solicit intelligence from area hunters on the possible location of grow sites

1997 CEASE Program Evaluation

Enclosed is the 1997 CEASE Program Evaluation. Let us know how the CEASE Program contributed to your agency's marijuana eradication efforts this year. Also, please include any ideas for 1998. Please return the CEASE Evaluation by October 25, 1997

NOTES and REMINDERS

- Monthly report CEASE Form 1 due: October 25th.
- CEASE overtime reimbursement is still available Please call for pre-approval first
- Please submit the CEASE Form 5 Marijuana Intelligence Report without the gray shading they do not fax well. Thanks.

Thank-you to the counties that returned the CEASE Ditchweed Survey. The Survey results will be added as an enclosure to the next CEASE HARVEST.

CEASE Mailing Address
P.O. Box 2188
Madison, WI 53701-2188

CEASE State Coordinator
Stan Blazek (608) 267-1306
CEASE Fax (608) 264-9477

CEASE Program Manager Craig Klyve - (608)267-4333

WP&L
Wisconsin Power & Light
222 W. Washington Ave
P.O. Box 192
WI 53701-0192

Mr. Craig S. Klyve
Director
Special Operations Bureau
CEASE Program Manager
123 W Washington Ave
P.O. Box 2188
Madison, WI 53701-2188

Re: Average electrical use for residential and farm customers

Dear Mr. Klyve:

Your letter dated August 5, 1997 requested information on electrical uses for single family residences and farms within Wisconsin Power & Light's service territory.

Reviewing average usage from our active electric meter database by revenue class and taxing district location I came up with the following

- Residential customers living within a village or city use approximately 550 To 600 kWh per month
- Residential customers living in a township have a slightly higher average of per month.
- Farm customers generally use between 1500 and 2000 kWh per month.

Individual conditions such as heat source and lifestyle will cause deviations from the above numbers. Customers with

electric heat will use more during the colder months Air conditioning load can increase a customers energy consumption in the summer.

I hope this information wilt be beneficial to you if you need any further information please feel free to contact me.

Sincerely

Kathy Jo Hall
Customer Information Analyst
Customer Accounting a Billing

Madison Gas and Electric Company
P.O. Box 1231
Madison, Wisconsin 53701-1231
608-252-7000

July 29, 1997

Mr. Craig Klyve
Director Special Operations, ONE
Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 55707-7857

Dear Craig:

Below you will find the most recent information on residential and farm average electric use. Please note, the monthly numbers are the average kWh for all the accounts in that group. The average kWh number at the bottom is the average of those averages. The "Lighting" represent all electric use except electric space heat The "Space Heating" columns represent all electric use plus electric space heat

	Single Family		Farm	
1996	Lighting	Space Heating	Lighting	Space Heating
January	797.0	1880.0	2477	NA
February	749.8	1916.8	2332	NA
March	668.3	1545.4	2245	NA
April	635.1	1234.6	2000	NA
May	606.4	930.0	1781	NA
June	648.0	771.1	1683	NA
July	815.1	790.7	1886	NA
August	769.0	756.8	1888	NA
September	776.2	742.4	1842	NA
October	633.4	729.4	1697	NA
November	636.1	1012.4	1909	NA
December	761.0	1597.5	2338	NA
Average kWh	708.0	1158.9	2006.9	NA

If you have any questions about this data please contact me at 252-4742.

Respectfully,
David E. Borske
Marketing Representative
Multifamily Marketing